

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**WILLIAM ORLANDO SMITH,
Petitioner,**

Civil Action No. 7:13 -cv-00608

v.

**UNITED STATES OF AMERICA,
Respondent.**

MEMORANDUM OPINION

**By: Hon. Michael F. Urbanski
United States District Judge**

William Orlando Smith, a Virginia inmate proceeding pro se, filed a Rule 60(b), Fed. R. Civ. P., motion to vacate a void judgment of the Supreme Court of Virginia, which the court construed as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254.¹ Petitioner challenges his criminal judgment entered by the Circuit Court of Chesterfield County in March 2005 for rape and abduction with intent to defile. Court records indicate that Petitioner previously filed a § 2254 petition about the same judgment in Smith v. Clarke, Civil Action No. 2:11-cv-00162 (E.D. Va. Oct. 25, 2011), that was dismissed with prejudice. Thus, Petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition. Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon certification from a United States Court of Appeals that claims in the subsequent petition meet certain criteria. Because Petitioner has not submitted any evidence that he has obtained such certification by the Fourth Circuit Court of Appeals, the court dismisses the petition without prejudice as successive and denies as moot Petitioner's motion to proceed in forma pauperis. Based upon the finding that Petitioner has not

¹ Specifically, Petitioner challenges the Supreme Court of Virginia's refusal to vacate a trial court's dismissal of his state habeas petition. The court notes that it lacks jurisdiction to entertain a Rule 60(b) motion about an order from the Supreme Court of Virginia or an appeal from the Supreme Court of Virginia.

made a substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

Entered: February 10, 2014

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge